

Decision 03-06-036

June 5, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company for an Order Authorizing it to Increase its Rates for Water Service in its Monterey Division to Increase Revenues by \$5,725,300 or 22.47% in the Year 2003; \$1,772,100, or 6.94% in the Year 2004; and \$996,500 or 3.02% in the Year 2005.

Application 02-04-022

ORDER DENYING THE APPLICATION
OF CALIFORNIA-AMERICAN WATER COMPANY
FOR REHEARING OF DECISION 03-02-030

I. BACKGROUND

On April 15, 2002, California-American Water Company ("Cal Am") filed an application for a general increase in rates for its Monterey Division. In its application, Cal-Am estimated annual regulatory expenses of \$32,000, "based on actual prior history and known occurrences that will take place in the current case." Exhibit CA-1 at p. 6-3; Tab B, Table 6-5. For its part, the Office of Ratepayer Advocates ("ORA") estimated annual regulatory expenses of \$14,489, assuming no public meetings, fewer hours spent by counsel, and less expensive accommodations. Exhibit ORA-1 at p. 4-4. On rebuttal, Cal-Am increased its estimate to an annual expense of \$57,100 to reflect various additional costs of hearing, including fees paid outside consultants. Exhibit CA-22, Attachment P.

On December 31, 2002, the presiding Administrative Law Judge issued a Proposed Decision in this proceeding, authorizing Cal-Am to increase

rates in its Monterey District \$2,642,100 for Test Year 2003, \$948,410 for Test Year 2004, and \$714,320 for Attrition Year 2005, or \$40,000 annually. In particular, the Proposed Decision determined that Cal-Am would reasonably incur regulatory expenses of \$120,000 during the period of 2003 through 2005. As it explained, “That is far higher than ORA advocates, somewhat higher than Cal-Am estimates as typical based on its past GRCs, but less than its late-presented estimate in this GRC.” Mimeo at p. 12. In conclusion, “Given the long history of ORA settlements . . . we decline to assume that the costs of this GRC will be typical of all GRCs in the future.” Id.

On January 19, 2003, ORA filed comments on the Proposed Decision, reiterating its recommendation that the Commission “adopt regulatory expenses in the total amount of \$43,467 amortized over three years to \$14,489 for 2002 and in each of the test years.” Comments at p. 2. In its view, “The evidence in the record does not support Cal-Am’s entire original estimate of \$95,869, so there is no factual or legal foundation to use that figure as a basis for increasing Cal-Am’s regulatory expenses still further.” Id. On January 24, 2003, although not having filed comments on the Proposed Decision, Cal-Am replied that “[t]he evidence on the record supports the [Proposed Decision’s] regulatory expense level of \$120,000 over the next three years.” Reply to ORA’s Comments at p. 2. Therefore, according to Cal-Am, the Commission “should discount ORA’s recommendation and adopt the [Proposed Decision’s] estimate of regulatory expenses.” Id.

On February 13, 2003, the Commission issued Decision 03-02-030 reaffirming the Proposed Decision’s determination that Cal-Am should be authorized to recover annual regulatory expenses of \$40,000. On March 24, 2003, Cal-Am filed an application for rehearing of Decision 03-02-030, now arguing that “[t]his regulatory expense level is completely out of line in light of Cal-Am’s historical costs for settled rate cases and the actual costs associated with this

general rate case . . .” Application for Rehearing at pp. 1-2. In turn, on April 7, 2003, ORA filed a response to Cal-Am’s application for rehearing, recommending that it be denied.

II. DISCUSSION

Section 1731 of the Public Utilities Code provides,

After any order or decision has been made by the Commission, any party to the action or proceeding . . . may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application or proceeding and specified in the application for rehearing.

In turn, under Section 1732, “The application for rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful.” Rule 86.1 of the Commission’s Rules of Practice and Procedure reiterates, “Applications for rehearing shall set forth specifically the grounds on which applicant considers the order or decision of the Commission to be unlawful or erroneous.” It states in elaboration, “The purpose of an application for rehearing is to alert the Commission to an error, so that error may be corrected expeditiously by the Commission.” Pointedly, Section 1757 offers further guidance to applicants for rehearing: “No new or additional evidence shall be introduced in the Supreme Court but the cause may be heard on the record of the commission as certified to by it.” In sum, as the California Supreme Court has explained, “[T]he findings of fact by the Commission . . . are not open to attack if they are supported by any reasonable construction of evidence.” Toward Utility Rate Normalization v. Public Utilities Commission, 22 Cal.3d 529, 537 (1978).

A. The Commission Reasonably Determined That Cal-Am's Estimate Of Regulatory Expenses Is Excessive.

Cal-Am argues first, "The actual regulatory expenses associated with this GRC, attached as Exhibit A to this Application, demonstrate that Cal-Am's \$171,368 estimate was significantly too low, making the \$120,000 regulatory expense adopted by the Commission in D.03-02-030 even more unfair."

Application for Rehearing at p. 2. Exhibit A to Cal-Am's application for rehearing is not in the record, however, and thus may not form the basis for any evidentiary finding here. At the same time, examination of the chronology of the items listed there, whether or not they be accurate or reasonable, reveals that all except \$8,645.14 were incurred prior to issuance of the Proposed Decision. Presumably, therefore, Cal-Am could have timely submitted any additional expenses it may have wanted the Commission to consider. Moreover, the Commission properly discounted the figure of \$171,368 requested at hearing by Cal-Am because it included expenses associated with witnesses whose testimony provided no help in developing the record, given their obvious conflicts of interest.

B. The Commission's Determination Of Cal-Am's Future Regulatory Expenses Is Well Supported By The Record.

Cal-Am next argues that "there is no evidentiary support in the record for the \$120,000 regulatory expense level figure adopted by the Commission." *Id.* at p.3. Cal-Am overlooks, however, that, absent a previously authorized memorandum or balancing account, the Commission's longstanding, consistent practice is to set rates based on forecasted expenses. In this regard, although certainly not determinative, expenses incurred in the present proceeding may be considered in the setting of future rates, along with all pertinent evidence, especially including similar expenses from prior proceedings. And, on the basis of this more comprehensive analysis, something close to the historical trend shown in Exhibit CA-1, Tab B, Table 6-5 will likely prove most predicative of future expenses. Indeed, Cal-Am earlier emphasized that it "included with its

Application undisputed historical data . . . showing regulatory expenses of roughly twice the amount of [\$14,489] ORA proposes for every year going back to 1996. (CA-1, Tab B, Table 6-5.)” Reply to ORA’s Comments at p. 1. Accordingly, as Cal-Am then concluded, “The evidence supports the [Proposed Decision’s] regulatory expense level of \$120,000 over the next three years.” Reply to ORA’s Comments at p. 2.

C. Cal-Am Has Been Provided A Fair Opportunity To Be Heard.

Cal-Am argues finally, “By denying reasonable expenses incurred in connection with this GRC the Commission is in effect denying Cal-Am the opportunity to be heard in a meaningful manner and in addition is denying Cal-Am a full and meaningful opportunity to earn its authorized rate of return.” Application for Rehearing at p. 3. This argument also lacks merit. The Commission has already provided Cal-Am a fair opportunity to be heard, even allowing it to introduce new evidence on the eve of hearing regarding regulatory expenses. The record is closed, however, and Cal-Am has offered no good reason why it should be reopened. Furthermore, the Commission’s determination to base future regulatory expenses on those previously authorized closely reflects Cal-Am’s own recommendation earlier in the proceeding. At this point, therefore, Cal-Am is limited to addressing why it now believes, on the basis of the evidence adduced at hearing, the Commission erred in determining that Cal-Am will reasonably incur regulatory expenses of \$120,000 over the next three years.

III. CONCLUSION

Cal-Am has failed to demonstrate that the Commission committed legal error in determining the regulatory expenses that Cal-Am will reasonably incur over the next three years.

THEREFORE, IT IS ORDERED that

1. Cal-Am's application for rehearing of Decision 03-02-030 is denied.
2. This proceeding is closed.

This order is effective today.

Dated June 5 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners